

§ 370.4

12 CFR Ch. III (1–1–15 Edition)

(iv) Limit or refrain from the payment of dividends.

(i) *Time limits on issuance of guaranteed debt.* (1) A participating entity that is either an insured depository institution, an entity that has issued FDIC-guaranteed debt before April 1, 2009, or an entity that has been approved pursuant to paragraph (h) of this section to issue FDIC-guaranteed debt after June 30, 2009 and on or before October 31, 2009, may issue FDIC-guaranteed debt under the debt guarantee program through and including October 31, 2009.

(2) A participating entity other than an entity described in paragraph (i)(1) of this section may issue FDIC-guaranteed debt under the debt guarantee program through and including June 30, 2009.

(j) *Issuance of non-guaranteed debt after June 30, 2009.* (1) After obtaining the FDIC's prior written approval to issue non-guaranteed debt pursuant to paragraph (h)(1) of this section, any participating entity that has elected pursuant to paragraph (g) of this section to issue senior unsecured non-guaranteed debt with maturities after June 30, 2012 and that has paid the fee provided in §370.6(f), may issue after June 30, 2009 senior unsecured non-guaranteed debt in any amount with maturities on or before June 30, 2012. A participating entity that has both made the election provided by paragraph (g) of this section and paid the fee provided by §370.6(f) does not need the FDIC's approval to issue senior unsecured non-guaranteed debt that matures after June 30, 2012.

(2) After obtaining the FDIC's prior written approval to issue non-guaranteed debt pursuant to paragraph (h)(1) of this section, any participating entity, other than an entity described in paragraph (j)(1) of this section, may issue after June 30, 2009 senior unsecured non-guaranteed debt in any amount with any maturity.

(k) *Emergency Guarantee Facility.* In the event that a participating entity that is either an insured depository institution or an entity that has issued FDIC-guaranteed debt on or before September 9, 2009 is unable, after October 31, 2009, to issue non-guaranteed debt to replace maturing senior unsecured

debt as a result of market disruptions or other circumstances beyond the entity's control, the participating entity may, with the FDIC's prior approval under paragraph (h) of this section, issue FDIC-guaranteed debt after October 31, 2009, and on or before April 30, 2010. Any such issuance is subject to all of the terms and conditions imposed by the FDIC in its approval decision as well as all of the provisions of this part, including without limitation, the payment of the applicable assessment and compliance with the disclosure requirements.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 9524, Mar. 4, 2009; 74 FR 12083, Mar. 23, 2009; 74 FR 54747, Oct. 23, 2009]

§ 370.4 Transaction Account Guarantee Program.

(a) In addition to the coverage afforded to depositors under 12 CFR Part 330, a depositor's funds in a non-interest-bearing transaction account maintained at a participating entity that is an insured depository institution are guaranteed in full (irrespective of the standard maximum deposit insurance amount defined in 12 CFR 330.1(n)) from October 14, 2008 through:

(1) The date of opt-out, in the case of an entity that opted out prior to December 5, 2008;

(2) December 31, 2009, in the case of an entity that opted out effective on January 1, 2010; or

(3) June 30, 2010, in the case of an entity that opts out of the transaction account guarantee program effective on July 1, 2010; or

(4) The TAG expiration date, in the case of an entity that does not opt out.

(b) In determining whether funds are in a noninterest-bearing transaction account for purposes of this section, the FDIC will apply its normal rules and procedures under §360.8 (12 CFR 360.8) for determining account balances at a failed insured depository institution. Under these procedures, funds may be swept or transferred from a noninterest-bearing transaction account to another type of deposit or nondeposit account. Unless the funds are in a noninterest-bearing transaction account after the completion of a sweep under §360.8, the funds will not

be guaranteed under the transaction account guarantee program.

(c) Notwithstanding paragraph (b) of this section, in the case of funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account, the FDIC will treat the swept funds as being in a noninterest-bearing transaction account. As a result of this treatment, the funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, as defined in 12 CFR 204.2(d), will be guaranteed under the transaction account guarantee program.

[73 FR 72266, Nov. 26, 2008, as amended at 74 FR 45098, Sept. 1, 2009; 75 FR 20264, Apr. 19, 2010]

§ 370.5 Participation.

(a) *Initial period.* All eligible entities are covered under the temporary liquidity guarantee program for the period from October 14, 2008, through December 5, 2008, unless they opt out on or before 11:59 p.m., Eastern Standard Time, December 5, 2008, in which case the coverage ends on the date of the opt-out.

(b) The issuance of FDIC-guaranteed debt subject to the protections of the debt guarantee program is an affirmative action by a participating entity that constitutes its agreement to be:

(1) Bound by the terms and conditions of the program, including without limitation, assessments and the terms of the Master Agreement as set forth on the FDIC's Web site;

(2) Subject to, and to comply with, any FDIC request to provide information relevant to participation in the debt guarantee program and to be subject to FDIC on-site reviews as needed, after consultation with the appropriate Federal banking agency, to determine compliance with the terms and requirements of the debt guarantee program; and

(3) Bound by the FDIC's decisions, in consultation with the appropriate Federal banking agency, regarding the management of the temporary liquidity guarantee program.

(c) *Opt-out and opt-in options.* (1) From October 14, 2008 through December 5, 2008, each eligible entity is a participating entity in both the debt guar-

antee program and the transaction account guarantee program, unless the entity opts out. No later than 11:59 p.m., Eastern Standard Time, December 5, 2008, each eligible entity must inform the FDIC if it desires to opt out of the debt guarantee program or the transaction account guarantee program, or both. Failure to opt out by 11:59 p.m., Eastern Standard Time, December 5, 2008 constitutes a decision to continue in the program after that date. Prior to December 5, 2008 an eligible entity may opt in to either or both programs by informing the FDIC that it will not opt out of either or both programs.

(2) Any insured depository institution that is participating in the transaction account guarantee program may elect to opt out of such program effective on January 1, 2010. Any such election to opt-out must be made in accordance with the procedures set forth in paragraph (g)(2) of this section. An election to opt out once made is irrevocable.

(3) Any insured depository institution that is participating in the transaction account guarantee program may request authorization to opt out of such program effective on July 1, 2010. Any such election to opt-out must be made in accordance with the procedures set forth in paragraph (g)(3) of this section. If the FDIC grants the request, the opt out is irrevocable.

(d) An eligible entity may elect to opt out of either the debt guarantee program or the transaction account guarantee program or both. The choice to opt out, once made, is irrevocable, except that, in the case of a merger between two eligible entities, the resulting institution will have a one-time option to revoke a prior decision to opt-out. This option must be requested by application to the FDIC in accordance with § 370.3(h). Similarly, the choice to affirmatively opt in, as provided in paragraph (c) of this section, once made, is irrevocable.

(e) All eligible entities that are affiliates of a U.S. bank holding company or that are affiliates of an eligible entity that is a U.S. savings and loan holding company must make the same decision regarding continued participation in each guarantee program; failure to do